

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KARL E. GARY, OSCAR R. IAMS,  
SHIRLEY J. IAMS, CHARLES W.  
PHILLIPS, DAVID HIGGENBOTHAM,  
JUDITH HIGGENBOTHAM, MARY  
ANN NEELY, CHARLES AMBROSE  
WHITLATCH, JR., DEBRA ANN  
WHITLATCH, DONALD WHITLATCH,  
FRANCIS E. WHITLATCH, HENRY  
ABNER WHITLATCH, NORMA  
JEAN WHITLATCH, ROBERT  
PHILLIPS, WILLIAM H. WHITLATCH,  
KATHY L. WHITLATCH, ALFRED R.  
CHAMBERS AS POWER OF  
ATTORNEY FOR GARY J. PIERSON,  
ALFRED R. CHAMBERS, JR.,  
ALFRED R. CHAMBERS AS POWER  
OF ATTORNEY FOR WINIFRED J.  
PIERSON, PAUL R. PHILLIPS,  
BARBARA SWARTZMILLER,  
CHARLES E. WHITLATCH, PATRICIA  
WHITLATCH, NETTIE PHILLIPS  
MORRIS, EDNA PHILLIPS SCHRADER,  
VIRGINIA KENNEDY, HELEN KELLY,  
MARY THORNE and KENNETH L.  
PHILLIPS,

Plaintiffs,

vs.

THE BRADDOCK CEMETERY, and  
CONSOL ENERGY, the successor  
and/or assign of RHEINBRAUN  
U.S. CORPORATION, and CNX  
COAL, the successor and/or assign  
of CONSOL PENNSYLVANIA COAL  
COMPANY,

Defendants.

2:05cv1438  
Electronic Filing

Judge Cercone  
Magistrate Judge Caiazza

**MEMORANDUM ORDER**

On November 3, 2005, this case was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636 (b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On May 17, 2006, the magistrate judge issued a Report and Recommendation (Document No. 31) recommending that the District Court grant the Defendants' Motion to Dismiss (Document No. 28). Service of the Report and Recommendation was made on all parties. Objections (Document No. 32 )were filed on June 2, 2006. Responses were filed by the Braddock Cemetery (Document No. 33) and by defendants Consol Energy, and CNX Coal (Document No. 34), on June 12, 2006. In these documents, the parties largely restate arguments made in their briefs.

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and objections thereto and responses, the following Order is entered:

AND NOW, this 26<sup>th</sup> day of June, 2006, IT IS HEREBY ORDERED that the Defendants' Motion to Dismiss is granted, and the Report and Recommendation of Magistrate Judge Caiazza dated May 17, 2006, is hereby adopted as the opinion of the court.



David Stewart Cercone  
United States District Judge

cc: Honorable Francis X. Caiazza  
Chief United States Magistrate Judge

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